

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
CIVIL CASE NO. 5:07CV33-RLV**

ROBERT L. LEMKEN,

Plaintiff/Claimant,

v.

MICHAEL J. ASTRUE,

Commissioner of Social Security,

Defendant/Commissioner.

Memorandum and Order

THIS MATTER is before the Court on the parties' cross-motions for summary judgment (Documents ##8-12) and upon the Memorandum and Recommendation of United States Magistrate Judge David C. Keesler (the "Magistrate Judge"). (Document #13)

Pursuant to 28 U.S.C. § 636(b)(1)(B), the Magistrate Judge was designated to consider and recommend disposition. In an opinion filed July 26, 2010, the Magistrate Judge recommended that Plaintiff's Motion for Summary Judgment be denied, that Defendant's Motion for Summary Judgment be granted, and that the Commissioner's decision be affirmed. (M&R at 17.) Plaintiff, through counsel, timely filed Objections to the Memorandum and Recommendation on July 29, 2010. (Document #14) The Commissioner filed a reply brief on August 4, 2010. (Document #15)

I.

The Federal Magistrate Act provides that "a district court shall make a *de novo* determination of those portions of the report or specific proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1); Camby v. Davis, 718 F.2d 198, 200 (4th Cir. 1983); Keeler v. Pea, 782 F. Supp. 42, 43 (D.S.C. 1992). The statute does not require *de*

novo review when an objecting party makes only general or conclusory objections that do not direct the court to the specific error in the magistrate judge's recommendations. Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Further, the statute does not on its face require any review at all of issues that are not the subject of an objection. Thomas v. Arn, 474 U.S. 140, 149 (1985); Camby, 718 F.2d at 200. Nonetheless, a district judge is responsible for the final determination and outcome of the case, and accordingly the Court has conducted a careful review of the Magistrate Judge's Memorandum and Recommendation as well as a *de novo* review of those issues specifically raised in Plaintiff's objections.

II.

Plaintiff Lemken's Objections to the Magistrate's Memorandum and Recommendation appear to identify each one of the issues raised in their respective cross-motions for summary judgment as "specific" objections to the Magistrate Judge's determination. Because Plaintiff essentially seeks to relitigate the legal issues thoroughly analyzed by the Magistrate Judge, and because the Commissioner's reply brief aptly addresses Plaintiff's arguments, further discussion is unnecessary.

After an independent review of the Memorandum and Recommendation, Plaintiff's Objections, the Commissioner's Reply, and a *de novo* review of the entire record, the Court concludes that the recommendations are, in fact, correct and in accordance with the governing law. Accordingly, the findings and conclusions of the Magistrate Judge are adopted for all purposes and hereby incorporated by reference.

III.

IT IS, THEREFORE, ORDERED that the Defendant-Commissioner's Motion for Summary Judgment is hereby **GRANTED** and the Commissioner's decision **AFFIRMED**. **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment is **DENIED**.

Signed: December 6, 2010

A handwritten signature in black ink, reading "Richard L. Voorhees", written over a horizontal line.

Richard L. Voorhees
United States District Judge

